

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

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December 21, 2004

FROM: RONALD D. REITZ
County Counsel

PAT MEAD, Director
Department of Public Works

**SUBJECT: APPROVE AMENDMENT TO CONTRACT WITH SPECIAL LITIGATION
COUNSEL FOR SAN TIMOTEO EMINENT DOMAIN CASE**

RECOMMENDATION: Approve Amendment No. 5 to Contract No. 01-1239 with McCormick, Kidman & Behrens in the amount of \$75,000 increasing the total contract price to \$525,000, for special eminent domain counsel services for acquisition of necessary rights of way in connection with the San Timoteo Creek Project.

BACKGROUND INFORMATION: On December 18, 2001, the Board of Supervisors approved contract No. 01-1239 with the firm of McCormick, Kidman & Behrens in the amount of \$125,000 to assist in acquisition of necessary rights of way in connection with the San Timoteo Creek Project. Because of the number of parcels to be acquired and the uncertainty of litigation it was difficult to accurately determine the total amount of the value of services to be rendered. As a result, four previous amendments were approved by the Board, which increased the contract amount from \$125,000 to \$450,000. At the present time all cases have been resolved with the exception of two property owners. Trial on the cases of these two property owners is scheduled for late fall. There is the possibility that one or both of the cases may settle. Amendment No. 5 would provide for additional litigation services should one or both of these cases proceed.

REVIEW AND APPROVAL BY OTHERS: This item was reviewed by Pat Mead (Director, Department of Public Works) on December 14, 2004; Charles S. Scolastico (Deputy County Counsel) on December 14, 2004; the County Administrative Office, (Valerie Clay, Deputy Administrative Officer, and Tom Forster, Administrative Analyst) on December 14, 2004.

FINANCIAL IMPACT: The cost of legal services relative to this amendment is \$75,000. These costs are considered San Timoteo Creek project costs under a local cooperation agreement between the Flood Control District and the US Army Corps of Engineers and are eligible for cost share on a basis of 25% District and 75% Corps of Engineers. Funds are available in the Flood Control District's Zone 3 budget (RFM-093-093).

COST REDUCTION REVIEW: The County Administrative Office has reviewed this agenda item and concurs with the department's proposal and recommends this action based on the immediate need for legal representation for the above cases.

SUPERVISORIAL DISTRICT(S): 3rd

PRESENTER: Ronald D. Reitz, County Counsel, 387-5459

Record of Action of the Board of Supervisors

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